

37 Am. Jur. 2d Fraud and Deceit § 15

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

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I. Overview

B. Nature and Effect

§ 15. As related to or distinguished from other grounds for relief or of liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

There is a clear distinction between a cause of action on contract and one based on fraud and deceit. In the former, recovery is based upon the express liability assumed by a person in his or her contract,¹ and in the latter, upon the liability incurred for a violation of the duty of honesty and fair dealing that the law enjoins upon one in his or her transactions with another.² The right to have a contract annulled for failure of consideration does not depend upon fraud in the inducement,³ and a mere breach of contract does not constitute fraud.⁴

Although there is generally no relief against unilateral mistake, in some circumstances, equity will relieve from the consequences of a mistake induced by the misrepresentation of the opposite party.⁵ If the misrepresentation was innocently made, and both parties were mistaken, the case may be treated as one of mutual mistake in a court of equity,⁶ but if the misrepresentation was willful, the case is governed by the rules applicable to a case of fraud.⁷ Also, in many jurisdictions, misrepresentation of material facts may be a ground for rescinding or avoiding a contract although there is no actual fraud and although the statements are innocently made.⁸

While duress has often been said to be a species of fraud, there would seem to be a marked distinction between duress and fraud in that in the former, there is an element of force or threatened force that is wholly lacking in the latter, and moreover, the injury is ordinarily accomplished in fraud without the knowledge of the victim while in duress he or she is usually fully conscious of the illegal element.⁹ There is also authority holding that coercion is not an element of fraud or misrepresentation, only duress.¹⁰

Likewise, undue influence is often said to be a species of fraud¹¹ or at least constructive fraud.¹²

Fraud must also be distinguished from the concept of breach of warranty in a sale of goods, which is dealt with exclusively under the Uniform Commercial Code.¹³

Proof of fraud would necessarily constitute an unfair or deceptive act or practice, but the converse is not always true.¹⁴

Footnotes

- ¹ Am. Jur. 2d, Contracts §§ 699 to 712.
- ² Lipkind v. Ward, 256 A.D. 74, 8 N.Y.S.2d 832 (3d Dep't 1939).
- ³ Am. Jur. 2d, Contracts §§ 551, 648.
- ⁴ Dunn v. Menassen, 913 S.W.2d 621 (Tex. App. Corpus Christi 1995), writ denied, (June 28, 1996).
- ⁵ Am. Jur. 2d, Equity §§ 6 to 8.
- ⁶ Am. Jur. 2d, Equity § 11.
- ⁷ Hudson v. Glens Falls Ins. Co., 218 N.Y. 133, 112 N.E. 728 (1916); White v. Harrigan, 1919 OK 352, 77 Okla. 123, 186 P. 224, 9 A.L.R. 1041 (1919).
- ⁸ § 121.
- ⁹ Am. Jur. 2d, Duress and Undue Influence § 2.
- ¹⁰ Seybert v. Cominco Alaska Exploration, 182 P.3d 1079 (Alaska 2008).
- ¹¹ McMeens v. Pease, 878 S.W.2d 185 (Tex. App. Corpus Christi 1994), writ denied, (July 28, 1994).
- ¹² Am. Jur. 2d, Duress and Undue Influence § 36.
- ¹³ Am. Jur. 2d, Sales § 627.
- ¹⁴ La Notte, Inc. v. New Way Gourmet, Inc., 83 N.C. App. 480, 350 S.E.2d 889 (1986).
As to unfair or deceptive acts or practices, see Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 1108 to 1118.